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International Court of Justice

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CONSOLIDATION OF CONTROL:
UTILIZATION AND MOLDING
OF
POLITICAL MACHINERY

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Between the Accession to Power (early 1933) and the Outbreak of the War in Europe (late 1939) the Nazi Conspirators Consolidated Their Control of Germany by Utilizing and Molding its Political Machinery to Their Own Purposes.

(a) The Nazi conspirators reduced the Reichstag to an impotent body of their own appointees.

(1) The Conspirators' Purpose:

> "Our young movement in essence and structure is anti-parliamentarian, i.e., it rejects majority voting as a matter of principle as well as in its own organization....Its participation in the activities of a parliament has only the purpose to contribute to its destruction, to the elimination of an institution which we consider as one of the gravest symptoms of decay of mankind....."

2883-PS, Hitler, Mein Kampf, (41st ed. 1933) pp. 378, 379.

(2) Under the Weimar Constitution, the Reichstag was a representative, parliamentary body with broad legislative powers.

The Constitution of the German Reich, adopted by the German people on 11 August 1919, provided for a Reichstag to be "composed of the delegates of the German people" (Article 20). In the chapter on "Legislation" it was provided (Article 68) that:

> "Bills are introduced by the government of the Reich or by members of the Reichstag. Reich laws shall be enacted by the Reichstag."

2050-PS, Die Verfassung des Deutschen Reichs, (Constitution of the German Reich), 11 August 1919, Articles 20-23, 68-77, 1919 Reichsgesetzblatt, Part I, p. 1383.

(3) The Nazi conspirators transferred substantially all of the Reichstag's legislative powers to Hitler and the Cabinet.

A fuller discussion of the Law for the Protection of the People and the Reich (also known as the Enabling Act) is contained in the brief on Paragraph II B (par. IV D (2) of the Indictment).

2001-PS, Gesetz zur Behebung der Not von Volk und Reich (Law to Remove the Distress of People and State), 24 March 1933, 1933 Reichsgesetzblatt, Part I, p. 141.

Under this law the Reichstag was, in effect, deprived of its legislative functions and the legislative as well as the executive powers of government were concentrated in Hitler and the Cabinet. The legislative

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activities of the Cabinet ("Reichsregierung") and its power to contravene constitutional limitations are treated in a separate brief submitted to the Tribunal.

During the period from March 1933 until the beginning of 1937, the Reichstag enacted only four laws: The Reconstruction Law of 30 January 1934 and the three Nürnberg laws of 15 September 1935. The Reichstag was retained chiefly as a sounding board for Hitler's speeches and all other legislation was enacted by the Cabinet, by the Cabinet ministers or by decree of the Führer.

> 2481-PS, FRICK, Vier Jahre des Dritten Reiches, (Four Years of the Third Reich) in Zeitschrift der Akademie für Deutsches Recht, (Journal of the Academy for German Law), (1937) p. 67.

The defendant HESS has candidly admitted the lack of importance of the Reichstag in the legislative process after 1933.

> 2426-PS, HESS, Reden (Speeches) (1940), p. 228.

Hitler indicated in a 1939 decree that the Reichstag would be permitted to enact only such laws as he, in his own judgment, might deem approproate for Reichstag legislation.

> 2018-PS, Erlass des Führers über die Bildung eines Ministerrats für die Reichsverteidigung (Fuhrer's Decree Establishing a Ministerial Council for Reich Defense) 30 August 1939, 1939 Reichsgesetzblatt, Part I, p. 1539.

(4) Soon after the accession to power, the Reichstag was effectively purged of all but Nazi members and a few satellites.

Immediately after the Nazis acquired the control of the central government they proceeded systematically to eliminate their opponents. First they caused all other political parties to be effectively dissolved and on 14 July 1933 issued a decree making the existence of any but the Nazi Party illegal.

> 1388-PS, Gesetz gegen die Neubildung von Parteien (Law Prohibiting Formation of Political Parties), 14 July 1933, 1933 Reichsgesetzblatt, Part I, p. 479.
>
> See brief on Paragraph II B (par. IV D (2) of the Indictment).

In early 1935 there were 661 delegates in the Reichstag. Of this number 641 were officially registered as Nazi party members and the remaining 20 were classified as "guests" ("Gäste").

2384-PS, Fabricius-Stamm, Bewegung, Staat und Volk in ihren Organisationen, (Movement, State and People in their Organizations), (1935) p. 161.

2380-PS, Nationalsozialistische Jahrbuch (National Socialist Year Book), (1935) pp. 223-224.

(b) The Nazi conspirators curtailed the freedom of popular elections throughout Germany.

(1) The Conspirators' Purpose:

> "Majority can never replace men....The political understanding of the masses is not sufficiently developed to produce independently specific political convictions and to select persons to represent them."

2883-PS, Hitler, Mein Kampf, (41st ed. 1933), pp. 89, 92.

(2) Under the Weimar Republic there existed constitutional and legislative guarantees of free, popular elections.

The Weimar Constitution of 1919 guaranteed the universal, equal and secret ballot and proportional representation.

2050-PS, Die Verfassung des Deutschen Reichs, (Constitution of the German Reich), 1919 Reichsgesetzblatt, Part I, p. 1383, arts. 20-23.

These general principles were implemented by the provisions of the Reich Election Law of 1924, particularly with respect to the multiple party system and the functioning of proportional representation.

2382-PS, Reichswahlgesetz, (Reich Election Law), 6 March 1924, 1924 Reichsgesetzblatt, Part I, p. 159, arts. 15, 17, 19, 30, 33.

(3) The occasional national elections of the period after 1933 were Nazi formalities devoid of the element of freedom of choice.

Elections, properly speaking, could not take place under the Nazi system. In the first place, the basic ideological doctrine of the "Führerprinzip" (leadership principle) dictated that all subordinates must be appointed by their superiors in the governmental hierarchy.

See Brief on Par. I. C 2 (par. IV C of the Indictment).

In order to insure the practical application of this principle, the Nazis immediately liquidated all other political parties and provided criminal sanctions against the formation of new parties.

See Brief on Par. II. B (par. IV D 2 of the Indictment) and discussion, supra, under A(3).

Although the Reichstag, unlike all other elective assemblies in Germany, was allowed to continue in existence, elections no longer involved a free choice between lists or candidates. At these elections there were usually large bands of uniformed Nazis surrounding the polls and intimidating the voters.

> See "The Nazi Plan", a motion picture which it is proposed to exhibit to the tribunal.
>
> 2955-PS, Affidavit of Magnus HEIMANNSBERG, 14 November 1945, referring to SA and other Nazi groups posted at polling places.

Also customary was the surreptitious marking of ballots (e.g. with skimmed milk) to ascertain the identity of the persons who cast "No" or invalid votes.

> R-142, Memoranda from SD Staffelscharführer to Koblenz district headquarters, dated 22 April 1938 and 7 May 1938, relating to the plebiscite of 10 April 1938.

Although it had already become practically impossible to have more than one list, in 1938 it was specifically provided by law that only one list of candidates was to be submitted to the electorate.

> 2355-PS, Zweites Gesetz über des Reichstagswahlrecht (Second Law Relating to the Right to Vote for the Reichstag), 18 March 1938, 1938 Reichsgesetzblatt, Part I, p. 258.

By the end of this period, little of substance remained in the election law. In an official volume published during the war there are reprinted the still effective provisions of the law of 1924. The majority of the substantive provisions have been marked "obsolete"("gegenstandslos").

> 2381-PS, Der Grossdeutsche Reichstag (The Greater German Reichstag) (1943), pp. 16-17

(4) With the abolition of representative assemblies and elective officials in the Länder and the municipalities, regional and local elections ceased to exist.

The comprehensive Nazi program for the centralization of German government carried in its wake the whole system of regional and local elections. Article 17 of the Weimar Constitution had required a representative form of government and universal, secret elections in all Länder and municipalities.

> 2050-PS, Die Verfassung des Deutschen Reichs. (The Constitution of the German Reich), 11 August 1919, 1919 Reichsgesetzblatt, Part I, p. 1383, art. 17.

Yet in early 1934, the sovereign powers ("Hoheitsrechte") of the Länder were transferred by law to the Reich and the land governments were placed under the Reich control:

> "The popular assemblies ("Volksvertretungen") of the Länder shall be abolished."
>
> 2006-PS, Gesetz über den Neuaufbau des Reichs, (Law for the Reconstruction of the Reich), 30 January 1934, 1934 Reichsgesetzblatt, Part I, p. 75.

Pursuant to the German Communal Ordinance of 30 January 1935, the mayors and executive officers of all municipalities received their appointments "through the confidence of Party and State" (article 6 (2)). Appointments were made by Reich authorities from lists prepared by the Party delegates (article 41). City councillors were selected by the Party delegates in agreement with the mayors (article 51(1)).

> 2008-PS, Die Deutsche Gemeindeordnung, (German Communal Ordinance), 30 January 1935, 1935 Reichsgesetzblatt, Part I, p. 49.

(c) The Nazi conspirators transformed the states, provinces and municipalities into what were, in effect, mere administrative organs of the central government.

(1) The Conspirators' Purpose:

> "National Socialism, as a matter of principle, must claim the right to enforce its doctrines, without regard to present federal boundaries, upon the entire German nation and to educate it in its ideas and its thinking....The National Socialist doctrine is not the servant of political interests of individual federal states but shall become the ruler of the German nation."
>
> 2883-PS, Hitler, Mein Kampf (41st ed. 1933) p. 648.

> "In the midst of the great power constellations of the globe there must be, for foreign as well as for internal political reasons, only one strong central national authority, if one wants Germany to regain a position which makes it fit for alliance with other countries."
>
> 2882-PS, ROSENBERG Das Partei Programm (The Party Program of 1922), (25th ed. 1942), p. 60.

(2) Under the pre-Nazi regime, the states, provinces and municipalities enjoyed a considerable degree of autonomy in the exercise of governmental functions.

The Weimar Constitution contains a clear recognition of the autonomy of the Länder in the legislative, executive and judicial spheres.

> 2050-PS, Die Verfassung des Deutschen Reichs (The Constitution of the German Reich), 11 August 1919, 1919 Reichsgesetzblatt, Part I, p. 1383, arts. 5, 12 (1), 14, 103.

(3) By a series of laws and decrees, the Nazi conspirators reduced the powers of the regional and local governments and substantially transformed them into territorial subdivisions of the Reich government.

The Nazi program of centralization began almost immediately after they acquired the chief executive posts of the government. On 31 March 1933, they promulgated the Provisional Law Integrating the Länder with the Reich.

> 2004-PS, Verlaufiges Gesetz zum Gleichschaltung der Länder mit dem Reich, (Provisional Law Integrating the Länder with the Reich), 31 March 1933, 1933 Reichsgesetzblatt, Part I, p. 153.

This law called for the dissolution of all state and local self governing bodies and for their reconstitution according to the number of votes cast for each party in the Reichstag election of 5 March 1933. The Communists and their affiliates were expressly denied representation.

This was followed a week later by the Second Law Integrating the Länder with the Reich.

> 2005-PS, Zweites Gesetz zur Gleichschaltung der Länder mit dem Reich, (Second Law of Integrating the Länder with the Reich), 7 April 1933, 1933 Reichsgesetzblatt, Part I, p. 173.

In this act the position of Reich Governor was established. He was to be appointed by the President upon the proposal of the Chancellor and was given power to appoint the members of the Land governments and the higher Land officials and judges, the authority to reconstruct the Land legislature according to the law of 31 March 1933 (supra) and the power of pardon.

On 31 January 1934, most of the remaining vestiges of Land independence were destroyed by the Law for the Reconstruction of the Reich:

> "The popular referendum and the Reichstag election of November 12, 1933, have proved that the German people have attained an indestructible internal unity ("unlösliche innere Einheit") superior to all internal subdivisions of political character. Consequently, the Reichstag has enacted the following law which is hereby promulgated with the unanimous vote of the Reichstag after ascertaining that the requirements of the Reich Constitution have been met:

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Article I. Popular assemblies ("Volksvertretungen") of the Länder shall be abolished.

Article II. (1) The sovereign powers ("Hoheitsrechte") of the Länder are transferred to the Reich.

(2) The Lander governments are placed under the Reich government.

Article III. The Reich governors are placed under the administrative supervision of the Reich Minister of Interior.

Article IV. The Reich Government may issue new constitutional laws." (2006-PS)

This law was implemented by a regulation issued by the defendant FRICK providing that all Land laws were to have the assent of the competent Minister of the Reich, that the highest echelons of the Land Government were to obey the orders of the competent Reich Minister and that the employees of the Lander might be transferred into the Reich civil service.

1653-PS, Erste Verordnung über den Neuaufbau des Reichs (First Regulation concerning the Reconstruction of the Reich), 2 February 1934, 1934 Reichsgesetzblatt, Part I, p. 81.

The Reichsrat (or Reich Council) was abolished by law on 14 February 1934, and all official representation on the part of the Länder in the administration of the central government was at an end.

2647-PS, Gesetz über die Aufhebung des Reichsrats (Law Abolishing the Reichsrat), 14 February 1934, 1934 Reichsgesetzblatt, Part I, p. 81.

The legislative patters was complete with the enactment of the Reich Governor Law on 30 January 1935, which solidified the system of centralized control. The Reich Governor was declared to be the official representative of the Reich government taking his orders directly from Hitler.

2007-PS, Reichstatthaltergesetz (Reich Governor Law), 30 January 1935, 1935 Reichsgesetzblatt, Part I, p. 65.

Turning to the provinces, the territorial subdivisions of Prussia, the same development is apparent. All local powers were concentrated in the Provincial Presidents who acted solely as representatives of the national administration.

> 2049-PS, Zweite Verordnung über den Neuaufbau des Reichs (Second Decree concerning the Reconstruction of the Reich), 27 November 1934, 1934 Reichsgesetzblatt, Part I, p. 1190.

Similarly in the case of the municipalities, local self-government was quickly reduced to a minimum and communal affairs were placed under central Reich control. The Nazi Party Delegate was given especially important functions:

> "....in order to insure harmony between the communal administration and the Party." (art. 6 (2)).

The Reich was given supervision over the municipalities:

> "....in order to insure that their activities conform with the laws and the aims of national leadership."
>
> 2008-PS, Die Deutsche Gemeindeordnung (German Communal Ordinance), 30 January 1935, 1935 Reichsgesetzblatt, Part I, p. 49, arts. 6, 33 41, 45 (1), 48, 51, 106.

The Nazi conspirators have frequently boasted of their comprehensive program of government centralization. The defendant FRICK, Minister of the Interior throughout this period, has written:

> "The reconstruction law abolished the soverign rights and the executive powers of the Länder and made the Reich the sole bearer of the rights of sovereignty. The supreme powers of the Länder do not exist any longer. The natural result of this was the subordination of the Land governments to the Reich government and the Land Ministers to the corresponding Reich Ministers. On 30 January 1934, the German Reich became one state."
>
> 2481-PS, FRICK, Vier Jahre des Dritten Reiches (Four Years of the Third Reich), in Zeitschrift der Akademie für Deutsches Recht (Journal of the Academy for German Law) (1937), p. 68.

In another article, FRICK indicated even more clearly the purposes which underlay this program of centralization:

> "In the National Socialist revolution of 1933, it was stipulated for the first time in the history of the German nation that the erection of a unified state (Einheitsstaat) would be accomplished. From the early days of his political activity, Adolf Hitler never left a doubt in the mind of anyone that he considered it the first duty of National Socialism to create a German Reich in which the will of the people would be led in a single direction and that the whole strength of the nation, at home and abroad, would be placed on the balance scale."

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2380-PS, Nationalsozialistisches Jahrbuch (National Socialist Yearbook), (1935) p. 212.

See also:

2378-PS, Dokumente der Deutschen Politik (Documents of German Politics), Volume 4 p. 207 (relating to the loss of autonomy of the Länder).

(d) The Nazi conspirators united the offices of President and Chancellor the person of Hitler.

The merger of the two offices was accomplished by the law of 1 August 1934, signed by the entire cabinet.

2003-PS, Gesetz über das Staatsoberhaupt des Deutschen Reichs (Law concerning the Soverign Head of the German Reich), 1 August 1934, 1934 Reichsgesetzblatt, Part I, p. 747.

The official Nazi statement concerning the effect of this statute contains this observation:

> "Through this law, the conduct of Party and State has been combined in one hand. . . . He is responsible only to his own conscience and to the German nation."

1893-PS, Organisationsbuch der NSDAP (Organization Book of the NSDAP) (1943) p. 146.

One of the significant consequences of this law was to give to Hitler the supreme command of the German armed forces, always a perquisite of the Presidency.

2050-PS, Die Verfassung des Deutschen Reichs (Constitution of the German Reich), 11 August 1919, 1919, Reichsgesetzblatt, Part I, p. 1383, art. 47.

Accordingly, every soldier was immediately required to take an oath of loyalty and obedience to Hitler.

2061-PS, Gesetz über die Vereidigung der Beamten und der Soldaten der Wermacht (Oath of Reich Officials and of German Soldiers), 20 August 1934, 1934 Reichsgesetzblatt, Part I, p. 785.

(e) The Nazi conspirators removed great numbers of civil servants on racial and political grounds and replaced them with party members and supporters.

(1) The Conspirators' Purpose:

> "We know that two things alone will save us: the end of internal corruption and the cleaning out of all those who owe their existence simply to the protection of members of the same political parties. Through the most brutal ruthlessness towards all officials installed by those political parties we must restore our finances. . . . The body of German officials must once more become what it was."

2881-PS, Adolf Hitlers Reden (Adolf Hitler's Speeches) (1934), p. 72.

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(2) The officials were "purged" through a series of Nazi laws and decrees.

The Nazi legislative machine turned to the field of civil service very soon after the accession to power. On 7 April 1933, the Law for the Restoration of the Professional Civil Service was promulgated.

> 1397-PS, Gesetz zur Wiederherstellung des Berufsbeamtentums (Law for the Restoration of the Professional Civil Service), 7 April 1933, 1933 Reichsgesetzblatt, Part I, p. 175.

Article 3 of this law applies the Nazi blood theories:

> "(1) Officials who are not of Aryan descent are to be retired (See Section 8); where honorary officials are concerned, they are to be discharged from office.
>
> (2) (1) does not apply to officials who have been in service since August 1, 1914, or who fought in the World War at the front for the German Reich or for its allies or whose fathers or sons were killed in the World War. The Reich Minister of the Interior after consultation with the competent Minister or with the highest state authorities may permit further exceptions in the case of officials who are in foreign countries."

A reading of Article 8 shows that retirement does not involve receipt of a pension unless the official has served at least ten years.

The political purge provision of this law is contained in Article 4, as follows:

> "Officials who because of their previous political activity do not offer security that they will exert themselves for the national state without reservations, may be discharged. For three months after dismissal, they will be paid their former salary. From this time on they receive three-quarters of their pensions (see 8) and corresponding annuities for their heirs."

The provisions of the act apply to all Reich, Land and Communal officials (art. 1 (2)). Civil Servants may be placed on the retired list without any reason "for the purpose of simplifying the administration", (art. 6). Discharges and transfers, once decided by the appropriate administrative chief, are final and are not subject to appeal (art. 7 (1)).

This basic enactment was followed by a series of decrees, regulations and amendments. For example, on 11 April 1933, the term "non-Ayran" was defined to include persons with only one non-Aryan grandparent.

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2012-PS, Erste Verordnung zur Durchführung des Gesetzes zur Wiederherstellung des Berufsbeamtentums (First decree for Administration of the Law for the Restoration of Professional Civil Service, 11 April 1933, 1933 Reichsgesetzblatt, Part I, p. 195.

An amendatory law of 30 June ruled out all civil servants married to non-Aryans.

1400-PS, Gesetz zur Änderung von Vorschriften auf dem Gebiete des Allgemeinen Beamtenrechts. (Law Changing the Regulations in Regard to Public Officer, 30 June 1933, 1933 Reichsgesetzblatt, Part I, p. 433.

The political standards of the "Purge Law" were made more explicit by the supplementary law of 20 July 1933. Officials who belonged to any party or organization which, in the opinion of the Nazis, furthered the aims of Communism, Marxism or Social Democracy were summarily to be discharged.

1398-PS, Gesetz zur Erganzung des Gesetzes zur Wiederherstellung des Berufbeamtentums (Law to supplement the Law for the Restoration of the Professional Civil Service), 20 July 1933, 1933 Reichsgesetzblatt, Part I, p. 518.

In the later years, these earlier provisions were enlarged and codified, no longer solely for the purposes of affecting the existing civil service, but rather to set out the qualifications for the appointment of new applicants and for their promotion. Thus, proof of devotion to National Socialism and documentary proof of acceptable "blood" were prescribed as conditions to promotion.

2326-PS, Reichsgrundsätze über Einstellung, Anstellung und Beforderung der Reichs- und Landesbeamten (Reich Principles Regarding Recruiting, etc.), 14 October 1936, 1936 Reichsgesetzblatt, Part I, p. 893.

The comprehensive German Civil Service Law of 26 January 1937 included the discriminatory provisions of the earlier legislation, and prevented the appointment of any applicants opposed or suspected of being opposed to the Nazi program and policy.

2340-PS, Deutsches Beamtengesetz (German Civil Law) 26 January 1937, 1937 Reichsgesetzblatt, Part I, p. 39.

In the legislation dealing with the training and education of civil servants, it is provided no person can be accepted for an official position unless he is a member of the Nazi Party or one of its formations ("Gliederungen").

> 2341-PS, Verordnung über die Vorbildung und die Laufbahn des Deutschen Beamten (Decree on the Training and Career of German Civil Servants), 28 February 1939, 1939 Reichsgesetzblatt, Part I, p. 371.

The total subjugation of the German civil servant was ultimately signified by the following resolution passed by the Reichstag at the request of the Führer.

> ".....without being bound by existing legal provisions, the Führer must therefore in his capacity as Führer of the nation, as commander-in-chief of the Armed Forces, as Head of the Government and as the highest bearer of all power, as highest Law Lord and as Führer of the Party, always be in a position to require every German -- whether a simple soldier or officer, subordinate or higher official, or judge, supervisory or operating functionary of the Party, laborer or employer -- to carry out his duties with all the means available to him and to discharge these duties according to a conscientious examination without reference to so-called vested rights, especially without the preambles of pre-existing procedure, by removal of any man from his office, rank or position."

> 2755-PS, Beschluss des Grossdeutschen Reichstags (Resolution of the Greater German Reichstag), 26 April 1942, 1942 Reichsgesetzblatt, Part I, p. 1427.

(f) The Nazi conspirators restricted the independence of the judiciary and rendered it subservient to their ends.

(1) The independence of the judges before the Nazis was guaranteed by the Weimar Constitution.

The fundamental principle is stated breifly in Article 102:

"Judges are independent and subject only to the law."

> 2050-PS, Die Verfassung Des Deutschen Reichs (The Constitution of the German Reich), 11 August 1919, 1919 Reichsgesetzblatt, Part I, p. 383.

Article 104 contains a safeguard against the arbitrary removal or suspension of judges while in Article 105 "exceptional courts" are prohibited. The fundamental rights of the individual are set out in Article 109 and include equality before the law.

(2) The Nazis quickly removed all judges who failed to fulfill their racial and political requirements.

Like all other public officials, the German judges became the subject of a wide-spread purge. Non-Aryans, political opponents of the Nazis and all persons suspected of antagonism to the aims of the Party were summarily removed.

> 2967-PS, Affidavit of Dr. Hans ANSCHÜTZ, 17 November 1945.

The provisions of the Law for the Restoration of Professional Civil Service of 7 April 1933 applied to all judges. This is declared expressly in the third regulation for the administration of this law.

> 2867-PS, Dritte Verordnung zur Durchfuhrung des Gesetzes zur Wiederherstellung des Berufsbeamtentums (Third Regulation for the Administration of The Law for the Restoration of the Professional Civil Service), 6 May 1933, 1933 Reichsgesetzblatt, Part I, p. 245.

(3) The Nazis set up a new system of special criminal courts, independent of the regular judiciary and directly subservient to the Party program.

To make certain that cases with political ramifications would be dealt with acceptably and in conformity with Party principles, the Nazis granted designated areas of criminal jurisdiction to the so-called Special Courts ("Sondergerichte").

> 2076-PS, Verordnung der Reichsregierung über die Bildung von Sondergerichten (Decree of the Government concerning the Formation of Special Courts), 21 March 1933, 1933 Reichsgesetzblatt, Part I, p. 136.

A later decree considerably broadened the jurisdiction of these courts.

> 2056-PS, Verordnung über die Erweiterung der Zustaendigkeit der Sondergerichte, (Decree of the Broadening of Jurisdiction of the Special Courts), 20 November 1938, 1938 Reichsgesetzblatt, Part I, p. 1632.

In 1934, the People's Court was set up as a trial court "in cases of high treason and treason".

> 2014-PS, Gesetz zur Änderung von Vorschriften des Strafrechts, etc., (Law Amending Regulations of Penal Law), 24 April 1934, 1934 Reichsgesetzblatt, Part I, p. 341.

This action was a direct result of the dissatisfaction of the Nazi rulers with the decision of the Supreme Court ("Reichsgericht") in the Reichstag fire trial. Three of the four defendants were acquitted although the Nazi conspirators had expected convictions in all cases.

> 2967-PS, Affidavit of Dr. Hans ANSCHÜTZ, 17 November 1945.

The law which created this new tribunal contained a wide definition of treason which would include most of what were regarded by the Nazis as "political" crimes (art. 3 (1)). The express denial of any appeal from the decisions of the People's Court (art. 5 (2)) was a further indication of the intention of the Nazis to set up a criminal law system totally outside the accepted judicial pattern. The definitive organization of the People's Court was later established by law in 1936.

> 2342-PS, Gesetz über den Volksgerichtshof, (Law on the People's Court), 18 April 1936, 1936 Reichsgesetzblatt, Part I, p. 369.

These new tribunals were staffed almost exclusively with Nazis and were used to tighten the Party's grip on Germany. This control became progressively stronger, due first, to the power of the prosecutor to pick the appropriate court; second, to the restriction of defense counsel in these courts to specially admitted attorneys; and finally, to the absence of appeal from the decisions of these judges. Moreover, there developed along side of the entire judicial system the increasingly powerful police administration under which persons opposed to the regime were regularly imprisoned in concentration camps without any type of hearing, even after acquittal by the courts.

> 2967-PS, Affidavit of Dr. Hans ANSCHÜTZ, 17 November 1945.

Still another group of courts was established within the Party itself. These Party Courts heard cases involving internal party discipline and infractions of the rules of conduct prescribed for members of formations and affiliated organizations. The published rules for the Party Judges emphasized the complete dependence of these judges upon the directions and supervision of their Party superiors.

> 2402-PS, Richtlinien für Parteigerichte (Rules for Party Judges) (1934) pp. VI, 1-2.

(4) The Nazis controlled all judges through special directives and orders from the central government.

The Nazi legal theorists have freely admitted that there was no place in their scheme of things for the truly independent judge. The defendant FRANK has underscored the role of the judge as a political functionary and as an administrator in the National Socialist state.

> 2378-PS, Dokumente der Deutschen Politik (Documents of German Politics), Volume 4, p. 337.

Two case histories of this period serve to illustrate the manner in which criminal proceedings were directly suppressed or otherwise affected by order of the Reich government.

In 1935, the Reich Governor of Saxony, Mutschmann, attempted to quash criminal proceedings which in this exceptional instance had been brought against officials of the Hohnstein concentration camp for a series of extremely brutal attacks upon inmates. The trial was held and the defendants convicted but during the trial the governor inquired of the presiding judge whether he did not think the penalty proposed by the prosecutor too severe and whether an acquittal was not indicated. After the conviction, two jurymen were ousted from the NSDAP and the prosecutor was advised by his superior to withdraw from the SA. Although the then Minister of Justice strongly recommended against taking any action to alter the decision, Hitler pardoned all the accused.

> 783-PS, Copy of letter, dated 18 January 1935, from Gürtner to Mutschmann.
>
> 784-PS, Copies of letters from Gürtner to HESS and Lutze, dated 5 June 1935.
>
> 785-PS, Copy of memorandum of Gürtner re legal proceedings against the camp personnel of concentration camp Hohnstein.
>
> 786-PS, Memorandum, dated 29 November, of Kaulbauch regarding the pardon for persons convicted of mistreatment in the concentration camp Hohnstein.

In another similar case Gürtner wrote directly to Hitler narrating the horrible details of maltreatment and advising that the case be regularly prosecuted. Nevertheless, Hitler ordered complete suppression of the proceedings.

> 787-PS, Copy of letter from Gürtner to Hitler, dated 18 June 1935.
>
> 788-PS, Copies of letters from Meissner to Gürtner, dated 25 June 1935 and 9 September 1935.

Under the Nazi regime, it was part of the official duty of many Party functionaries to supervise the administration of justice. The official papers of HESS contain detailed statements concerning his own functions and those of the Gauleiter in deciding criminal cases.

> 2639-PS, Anordnungen der Stellvertreter des Führers (Directives of the Deputy of the Führer)(1937), pp. 190-192.

Another type of governmental interference in judicial matters is evidenced by the confidential letter which the Ministery of Justice sent in early 1938 to the Chief Justices of the Regional Supreme Courts ("Oberlandesgerichtsprasidenten"). The judges were instructed to submit lists of names of lawyers who would be sufficiently able and trustworthy to represent in court persons who had been taken into "protective custody". The main requirement was absolute political reliability. Simple Party membership was not enough; to be selected the lawyers had to enjoy the confidence of the "Gestapo".

> 651-PS, Confidential circular signed by Schlegeberger, dated 31 January 1938.

After the war began, Thierack revealed the low state to which the judiciary had fallen under Nazis rule. He argued that the judge was not the "supervisor" but the "assistant" of the government. He said that the word "independent", as applied to the judge, was to be eliminated from the vocabulary and that although the judge should retain a certain freedom of decision in particular cases, the government "can and must" give him the "general line" to follow. For this purpose, Thierack decided in 1942 to send confidential Judge's Letters ("Richterbriefe") to all German judges and prosecutors, setting forth the political principles and directives with which all judicial personnel were obligated to comply.

> 2482-PS, Deutsche Justiz (German Justice, a legal periodical) (1942), p. 662.

The first of these Judge's Letters clearly expresses the complete subordination of the judge to the Führer and his government.

> D-229, Extract from a pamphlet entitled Judge's Letters, dated 1 October 1942, signed by Thierack.

(g) The Nazi conspirators greatly enlarged existing State and Party organizations and established an elaborate network of new formations and agencies.

The totalitarian character of the Nazi regime led to the establishment of a great number of new official and semi-official agencies and organizations in the various fields of life which were permeated by Nazi doctrine and practice, including culture, trade, industry and agriculture.

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New agencies had to be created to handle the large number of additional administrative tasks taken over from the Länder and the municipalities. Moreover, the mobilization of the political, economic and military resources of Germany required the formation of such coordinating "super-agencies" as the Four Year Plan, the Plenipotentiary for Economics, the Plenipotentiary for Administration and the Ministerial Council for the Defense of the Reich. With the outbreak of war, the central Reich government was an extremely complicated structure held together under strict Nazi dictatorship.

> See chart of the Nazi State which the prosecution proposes to offer, showing all major governmental agencies and the names of chief officials.
>
> 2261-PS, Copy of Reichsverteidigungsgesetz (secret Reich Defense Law), 21 May 1935.
>
> 2194-PS, Copy of Reichsverteidigungsgesetz (secret Reich Defense Law), 4 September 1938.
>
> 2018-PS, Erlass des Führers über die Bildung eines Ministerrats fur die Reichsverteidigung (Führer's Decree Establishing a Ministerial Council for Reich Defense), 30 August 1939, 1939 Reichsgesetzblatt, Part I, p. 1539.

Simultaneously on the Party side, the growth of agencies and organizations proceeded rapidly. The Party spread, octopus-like, throughout all of Germany and into many foreign lands.

> See chart of the Nazi Party which the prosecution proposes to offer, showing all major organizations, offices and functionaries.
>
> 1725-PS, Verordnung zur Durchführung des Gesetzes zur Sicherung der Einheit von Partei und Staat. (Ordinance of Enforcement of the Law for Securing the Unity of Party and State), 29 March 1935, 1935 Reichsgesetzblatt, Part I, p. 502.

This process of growth was summed up late in 1937 in an official statement of the Party Chancellery as follows:

> "In order to control the whole German nation in all spheres of life, the NSDAP, after assuming power, set up under its leadership the new Party formations and affiliated organizations."

> 2383A-PS, Verfügungen, Anordnungen, Bekanntgaben (Directives, Decrees and Orders of the Party Chancellery), Volume I, p. 238.

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(h) The Nazi conspirators created a dual system of government controls, set up Party agencies to correspond with State agencies and coordinated their activities, often by uniting corresponding State and Party offices in a single person.

(1) The Conspirators' Purpose:

> "Such a revolution can and will only be achieved by a movement which itself is already organized in the spirit of such ideas and thus in itself already bears the coming state. Therefore, the National Socialist movement may today become imbued with these ideas and put them into practice in its own organization so that it not only may direct the state according to the same principles, but also may be in a position to put at the state's disposal the finished organizational structure of its own state."

2883-PS, Hitler, Mein Kampf (41st ed. 1933), p. 503.

(2) Coordination of Party and State

The Nazis attempted to achieve a certain degree of identity between the Party and the State and, at the same time, to maintain two separate organizational structures. After the rise to power, the fundamental principle of unity was translated into "law":

> "Article 1
>
> 1) After the victory of the National Socialistic Revolution, the National Socialistic German Labor Party is the bearer of the concept of the German State and is inseparably the state."

1395-PS, Gesetz zur Sicherung der Einheit von Partei und Staat. (Law on Securing the Unity of Party and State), 1 December 1933, 1933 Reichsgesetzblatt, Part I, p. 1016.

The manner in which the Nazis retained a duality of organization despite the theory of unity is graphically portrayed in the charts of the Party and the State submitted to this Tribunal. These visual exhibits demonstrate the comprehensive character of the Party organization which was established on parallel lines with the corresponding government structure. The Party structure remained at all times technically separate and could be used for non-governmental purposes whenever such use best served the needs of the conspirators.

In innumerable instances, the corresponding Party and State offices were, in fact, held by the same person.

See charts on the Party and the State, showing incumbents of major official posts.

For example, the Gauleiter of the Party in most instances also held the post of Reich Governor (or, in Prussia, that of Provincial President).

> 2880-PS, Taschenbuch für Verwaltungsbeamte (Handbook for Administrative Officials)(1942), pp. 118 ff., 212 ff.

The coordination of the Party and State functions started at the top. The Chief of the Party Chancellory was designated a Reich Minister and endowed with plenary powers in the preparation and approval of legislation. He acted as liaison officer at the highest level between Party officials and cabinet ministers. He was given also the duty of passing on the appointment of all the more important civil servants.

> 2787-PS, Anordnungen der Stellvertreter des Führers (Decrees of the Deputy of the Führer) (1937), pp. 67-68, 270.

Many of the same powers were bestowed upon the other Reichsleiter (Reich Party leaders or directorate). The official Nazi exposition of their position is as follows:

> "It is in the Reich Directorate where the strings of the organization of the German people and the State meet. By endowment of the Chief of the Party Chancellery with the powers of a Reich Minister, and by special administrative directives, the penetration of the State apparatus with the political will of the Party is guaranteed. It is the task of the separate organs of the Reich Directorate to maintain as close a contact as possible with the life of the nation through their sub-offices in the Gaus. Observations at the front are to be collected and exploited by the offices of the Reich Directorate."

> 1893-PS, Organisationsbuch der NSDAP (Organization Book of the NSDAP) (1943), pp. 148-149.

On the regional and local levels, the Gauleiter, Kreisleiter, etc., were also empowered to control the purely governmental authorities on political matters. The defendent HESS issued the following order shortly after the war began:

> "I, therefore order that the bearer of sovereignty (Hoheitsträger) of the NSDAP (Gauleiter, Kreisleiter, Ortsgruppenleiter) in the scope of his authority is responsible for the political leadership and the frame of mind (Stimmung) of the population. It is his right and his duty to take or to cause to be taken any measures necessary for the expeditious fulfillment of his political duties and for the elimination of wrong within the

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Party. He is exclusively responsible to his superior bearers of sovereignty (Hoheitsträger)."

> 2383~~A~~-PS, Verfügungen, Anordnungen, Bekanntgaben (Orders, Directives and Memoranda of the Party Chancellory), Volume 1, p. 32.

In the later years, the functional coordination of Party and State offices became much more common. A reference to the charts will indicate the extent of overlapping as well as the number of persons who held offices both in the Party and State structures. The appointment of Himmler as Reichsfurher SS and Chief of the German police is a typical example of the way in which State and Party functions became inextricably merged so as to render any clean lines of demarcation impossible.

> 2073-PS, Erlass über die Einsetzung eines Chefs der Deutschen Polizei im Reichsministerium des Innern (Decree of the Appointment of a Chief of the German Police in the Ministry of the Interior), 17 June 1936, 1936 Reichsgesetzblatt, Part I, p. 487.

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